

REMARKS/ARGUMENTS

Claims 1-13, 15-53, 55-80 and 115-121 were examined and rejected. The claims have been amended and cancelled as noted above. Reexamination and reconsideration of the claims as amended are respectfully requested.

Claim Objections

Claim 116 was objected to for a typographical error which has now been corrected in the currently amended claim.

The Examiner has also noted an inconsistency between the language of claim 1 and claims 30-38. Claim 1 has now been amended to more distinctly claim a combination comprising an "at least one stationary femoral member," "at least one adjustable femoral member," and "a tibial member" to resolve this apparent inconsistency. Claim 30 has been canceled and claims 31-38 have been amended appropriately.

Claim Rejections - 35 U.S.C. §112

Claims 1-13, 15-53, 55-80, and 115-121 were rejected as failing to comply with the written description requirement because the drawings do not show "a right angle" but instead illustrate an approximate right angle. As suggested by the Examiner, claim 1 has now been amended to recite "substantially right angles."

Claim Rejections - 35 U.S.C. §102(b)

Claim 1 and the claims which depend therefrom were rejected as being anticipated by Petersen, Luckman, and Haines et al. Claim 1 has been amended to more particularly distinguish the newly cited art. Claim 42 and claims which depend therefrom were rejected as being anticipated by Luckman. Claim 42 and all claims depending therefrom have been cancelled. The rejection of claim 1 and claims depending therefrom are overcome as follows.

Claim 1 has now been amended to recite a tibial member having a pair of complementary depressions, said tibial member being engageable with a surface of the proximal tibia, as previously set forth in claim 30 and supported by the specification ([0028] to [0030], [0061], Fig. 61). The cutting guide head 54 of the tibia resection guide 55 of Petersen is positioned, and only functional, within a portion of the tibia. It is not engaged with a surface of the proximal tibia. Haines does not describe a tibial member and an adjustable femoral member having a first surface disposed to contact the tibial member. The tibial referencing component 70, instead of an adjustable femoral member in the present application, is adjusted to introduce tension into the knee ligaments.

Claim 1 has been further amended to recite that "the posterior condylar member comprising a medial femoral posterior condylar portion and a lateral femoral posterior condylar portion . . . [which] . . . slidably contact the complementary depressions" as previously set forth in claims 8 and 15. None of the cited art remotely suggests this structure.

The horizontal member 14 of Petersen is designed to fit within a prepared surface of the femoral cortex (Col. 1, Ln, 63-65). The instrumentation of Luckman is fitted for only one condyle (Abstract, Fig. 7). Haines engages the femoral member 20 and condylar member 70 with an adjusting screw 62.

Neither Petersen, Luckman nor Haines et al. describe each and every element of claim 1 and thus the claims depending therefrom also. Thus, anticipation cannot be established. Applicants believe all claims now pending in this Application are in condition for allowance and an action to that end is respectfully requested.

It is noted in the Office Action that the Examiner never specifically addressed the limitations of dependent claims 8 and 15 which have now been incorporated by reference. Applicants believe that incorporation of the clear structural requirements of these two independent claims both distinguishes the prior art and provides the "structural limitations" that the Examiner found lacking in the claims heretofore.

Appl. No. 10/773,608

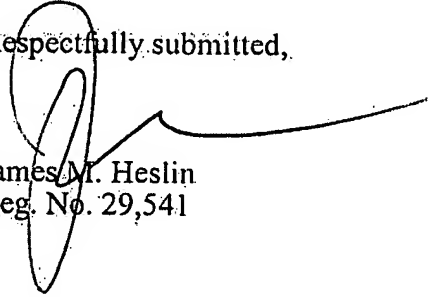
Amdt. filed with RCE dated October 29, 2007

Reply to Office Action of October 16, 2007

PATENT

If for any reason the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 650-326-2400.

Respectfully submitted,


James M. Heslin
Reg. No. 29,541

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, Eighth Floor
San Francisco, California 94111-3834
Tel: 650-326-2400
Fax: 415-576-0300
JMH:djc/jke
61188551 v1